

## **REMARKS**

### **Restriction Requirement**

In response to the Notice of Non-Compliant Amendment dated January 11, 2007,

please consider the following:

Restriction has been required between the following, two Groups of claims:

I. Claims 5-10, 22 and 24-27 drawn to a surgical access device, classified in class, subclass 164.00.

II. Claims 11-17 and 23 drawn to a surgical seal assembly, classified in Class 251, subclass 149.2.

Applicant hereby elects without prejudice Group I. The claims readable on Group I include claims 5-10, 22, 24-27 and new claims 28-31. Applicant further reserves the right to pursue the claims of Group II by a separate divisional/continuation filing.

### **Prosecution History**

This specification was filed on September 24, 2003 claiming priority to several parent and grandparent applications, and to a provisional application with a filing date of May 2, 1997. Applicant has diligently prosecuted the current application even at one point filing a Notice of Appeal after a Final Office Action was mailed on August 23, 2005. A subsequent Office Action after the filing of the Notice of Appeal was mailed February 23, 2006 where the finality of the prior Office Action was withdrawn and the claims were rejected based upon a reference, namely, U.S. Patent No. 6,860,869 to Dennis. A double patenting rejection was also made based upon commonly assigned U.S. Patent No. 6,702,787. On May 3, 2006, Applicants duly filed a Response to the Office Action along with a Terminal Disclaimer and obviated the

prior art rejection on Dennis' '869 because Dennis '869 is not prior art to the subject application.

No amendments to the claims or new claims were presented in the Response. Thereafter, a

Restriction Requirement was mailed on September 8, 2006 requiring restriction to the pending

claims which already had been examined.

Applicant subsequently contacted Examiner Henry H. Bennet who indicated that the restriction requirement was improper and indicated he would examine the application. At the direction of Examiner Bennet, Applicants filed a Request for Reconsideration of the Restriction Requirement on October 10, 2006 (copy attached). However, to Applicants' surprise, a Notice of Non-Compliant Amendment was mailed January 11, 2007. Applicants attempted to contact Examiner Bennet but found out that Examiner Bennet had retired.

As appreciated, the Restriction Requirement presented at this stage in the prosecution is untimely. Furthermore, the delay in prosecution of the application as outlined hereinabove has been unduly burdensome to the Applicant and has resulted in substantial delay in the issuance of this patent. Thus, it is requested that the PTO complete the examination of the claims of this application in the most efficient manner possible.

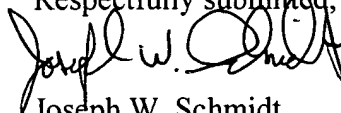
Application No. 10/670,032  
Amendment dated March 30, 2005  
Reply to Office Action of Sept 30, 2004

Should the Examiner believe that a telephone or a personal interview may facilitate resolution of any remaining matters, he/she is respectfully requested to contact

Applicant's undersigned representative at the number indicated below.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph W. Schmidt", written over the typed name.

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